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**HOUSE BILL 1104**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representative Goodman

Prefiled 01/03/23.

1 AN ACT Relating to eligibility and requirements for deferred  
2 prosecutions; amending RCW 10.05.010, 10.05.015, 10.05.020,  
3 10.05.030, 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100,  
4 10.05.120, 10.05.140, 10.05.150, 10.05.155, 10.05.170, and 9.94A.525;  
5 adding a new section to chapter 10.05 RCW; and providing an effective  
6 date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 10.05.010 and 2019 c 263 s 701 are each amended to  
9 read as follows:

10 (1) In a court of limited jurisdiction a person charged with a  
11 misdemeanor or gross misdemeanor may petition the court to be  
12 considered for a deferred prosecution (~~(program)~~). The petition shall  
13 be filed with the court at least seven days before the date set for  
14 trial but, upon a written motion and affidavit establishing good  
15 cause for the delay and failure to comply with this section, the  
16 court may waive this requirement subject to the defendant's  
17 reimbursement to the court of the witness fees and expenses due for  
18 subpoenaed witnesses who have appeared on the date set for trial. A  
19 person charged with a misdemeanor or gross misdemeanor shall not be  
20 eligible for a deferred prosecution unless the court makes specific  
21 findings pursuant to RCW 10.05.020.

1           (2) A person charged with a (~~traffic infraction, misdemeanor, or~~  
2 ~~gross misdemeanor under Title 46 RCW, or a misdemeanor or gross~~  
3 ~~misdemeanor domestic violence offense,)) violation of RCW 46.61.502  
4 or 46.61.504 shall not be eligible for a deferred prosecution  
5 (~~program~~) unless the court makes specific findings pursuant to RCW  
6 10.05.020. A person (~~may not participate in a deferred prosecution~~  
7 ~~program for a traffic infraction, misdemeanor, or gross misdemeanor~~  
8 ~~under Title 46 RCW if he or she has participated in a deferred~~  
9 ~~prosecution program for a prior traffic infraction, misdemeanor, or~~  
10 ~~gross misdemeanor under Title 46 RCW, and a person may not~~  
11 ~~participate in a deferred prosecution program for a misdemeanor or~~  
12 ~~gross misdemeanor domestic violence offense if he or she has~~  
13 ~~participated in a deferred prosecution program for a prior domestic~~  
14 ~~violence offense)) who petitions the court for the deferred  
15 prosecution and participates in the deferred prosecution under this  
16 chapter for his or her first violation of RCW 46.61.502 or 46.61.504  
17 is eligible to petition the court for a second deferred prosecution  
18 for a violation of RCW 46.61.502 or 46.61.504 if the person remains  
19 eligible, specific findings are made pursuant to RCW 10.05.020, and  
20 the person has no prior out-of-state convictions defined as a "prior  
21 offense" under RCW 46.61.5055. Separate offenses committed more than  
22 seven days apart may not be consolidated in a single program.~~~~

23           (3) A person charged with a misdemeanor or a gross misdemeanor  
24 under chapter 9A.42 RCW shall not be eligible for a deferred  
25 prosecution (~~program~~) unless the court makes specific findings  
26 pursuant to RCW 10.05.020. Such person shall not be eligible for a  
27 deferred prosecution (~~program~~) more than once.

28           (4) A person is not eligible for a deferred prosecution  
29 (~~program~~) if the misdemeanor or gross misdemeanor domestic violence  
30 offense was originally charged as a felony offense in superior court.

31           (5) A person may petition a court for a second deferred  
32 prosecution while still under the jurisdiction of a court for the  
33 person's first deferred prosecution; however, the first deferred  
34 prosecution shall be revoked prior to the entry of the second  
35 deferred prosecution.

36           (6) A person may not be on two deferred prosecutions at the same  
37 time unless separate offenses are committed within seven days of each  
38 other and the person petitions to consolidate each offense into a  
39 single deferred prosecution.

1 (7) A person charged with a misdemeanor or gross misdemeanor for  
2 a violation of RCW 46.61.502 or 46.61.504 who does not participate in  
3 a deferred prosecution for his or her first violation of RCW  
4 46.61.502 or 46.61.504 remains eligible to petition the court for a  
5 deferred prosecution pursuant to the terms of this section and  
6 specific findings made under RCW 10.05.020. Such person shall not be  
7 eligible for a deferred prosecution more than once.

8 **Sec. 2.** RCW 10.05.015 and 2019 c 263 s 702 are each amended to  
9 read as follows:

10 At the time of arraignment a person charged with a violation of  
11 RCW 46.61.502 or 46.61.504 or a misdemeanor or gross misdemeanor  
12 domestic violence offense may be given a statement by the court that  
13 explains the availability, operation, and effects of the deferred  
14 prosecution (~~program~~).

15 **Sec. 3.** RCW 10.05.020 and 2021 c 215 s 115 are each amended to  
16 read as follows:

17 (1) Except as provided in subsection (2) of this section, the  
18 petitioner shall allege under oath in the petition that the wrongful  
19 conduct charged is the result of or caused by substance use disorders  
20 or mental (~~problems~~) health disorders or domestic violence behavior  
21 problems for which the person is in need of treatment and unless  
22 treated the probability of future recurrence is great, along with a  
23 statement that the person agrees to pay the cost of a diagnosis and  
24 treatment of the alleged problem or problems if financially able to  
25 do so. The petition shall also contain a case history and written  
26 assessment prepared by an approved (~~substance use disorder treatment~~  
27 ~~program~~) behavioral health agency, approved for mental health  
28 services or substance use disorder services, as designated in chapter  
29 71.24 RCW (~~if the petition alleges a substance use disorder, by an~~  
30 ~~approved mental health center if the petition alleges a mental~~  
31 ~~problem,~~) or by a state-certified domestic violence treatment  
32 provider pursuant to RCW 43.20A.735 (~~if the petition alleges a~~  
33 ~~domestic violence behavior problem~~).

34 (2) In the case of a petitioner charged with a misdemeanor or  
35 gross misdemeanor under chapter 9A.42 RCW, the petitioner shall  
36 allege under oath in the petition that the petitioner is the natural  
37 or adoptive parent of the alleged victim; that the wrongful conduct  
38 charged is the result of parenting problems for which the petitioner

1 is in need of services; that the petitioner is in need of child  
2 welfare services under chapter 74.13 RCW to improve his or her  
3 parenting skills in order to better provide his or her child or  
4 children with the basic necessities of life; that the petitioner  
5 wants to correct his or her conduct to reduce the likelihood of harm  
6 to his or her minor children; that in the absence of child welfare  
7 services the petitioner may be unable to reduce the likelihood of  
8 harm to his or her minor children; and that the petitioner has  
9 cooperated with the department of (~~social and health services~~)  
10 children, youth, and families to develop a plan to receive  
11 appropriate child welfare services; along with a statement that the  
12 person agrees to pay the cost of the services if he or she is  
13 financially able to do so. The petition shall also contain a case  
14 history and a written service plan from the department of (~~social  
15 and health services~~) children, youth, and families.

16 (3) Before entry of an order deferring prosecution, a petitioner  
17 shall be advised of his or her rights as an accused and execute, as a  
18 condition of receiving treatment, a statement that contains: (a) An  
19 acknowledgment of his or her rights; (b) an acknowledgment and waiver  
20 of the right to testify, the right to a speedy trial, the right to  
21 call witnesses to testify, the right to present evidence in his or  
22 her defense, and the right to a jury trial; (c) a stipulation to the  
23 admissibility and sufficiency of the facts contained in the written  
24 police report; and (d) an acknowledgment that the statement will be  
25 entered and used to support a finding of guilty if the court finds  
26 cause to revoke the order granting deferred prosecution. The  
27 petitioner shall also be advised that he or she may, if he or she  
28 proceeds to trial and is found guilty, be allowed to seek suspension  
29 of some or all of the fines and incarceration that may be ordered  
30 upon the condition that he or she seek treatment and, further, that  
31 he or she may seek treatment from public and private agencies at any  
32 time without regard to whether or not he or she is found guilty of  
33 the offense charged. He or she shall also be advised that the court  
34 will not accept a petition for deferred prosecution from a person  
35 who: (i) Sincerely believes that he or she is innocent of the  
36 charges; (ii) sincerely believes that he or she does not, in fact,  
37 suffer from (~~alcoholism, drug addiction, mental problems~~) a  
38 substance use disorder, a mental health disorder, or domestic  
39 violence behavior problems; or (iii) in the case of a petitioner

1 charged under chapter 9A.42 RCW, sincerely believes that he or she  
2 does not need child welfare services.

3 (4) Before entering an order deferring prosecution, the court  
4 shall make specific findings that: (a) The petitioner has stipulated  
5 to the admissibility and sufficiency of the facts as contained in the  
6 written police report; (b) the petitioner has acknowledged the  
7 admissibility of the stipulated facts in any criminal hearing on the  
8 underlying offense or offenses held subsequent to revocation of the  
9 order granting deferred prosecution; (c) the petitioner has  
10 acknowledged and waived the right to testify, the right to a speedy  
11 trial, the right to call witnesses to testify, the right to present  
12 evidence in his or her defense, and the right to a jury trial; and  
13 (d) the petitioner's statements were made knowingly and voluntarily.  
14 Such findings shall be included in the order granting deferred  
15 prosecution.

16 **Sec. 4.** RCW 10.05.030 and 2021 c 215 s 116 are each amended to  
17 read as follows:

18 The arraigning judge upon consideration of the petition and with  
19 the concurrence of the prosecuting attorney may continue the  
20 arraignment and refer such person for a diagnostic investigation and  
21 evaluation to:

22 (1) (~~(An approved substance use disorder treatment program)~~) A  
23 state-approved behavioral health agency, approved for substance use  
24 disorder services, as designated in chapter 71.24 RCW if the petition  
25 alleges a substance use disorder;

26 (2) (~~(An approved mental health center)~~) A state-approved  
27 behavioral health agency, approved for mental health services, as  
28 designated in chapter 71.24 RCW, if the petition alleges a mental  
29 (~~(problem)~~) health disorder;

30 (3) The department of (~~(social and health services)~~) children,  
31 youth, and families if the petition is brought under RCW  
32 10.05.020(2); or

33 (4) An approved state-certified domestic violence treatment  
34 provider pursuant to RCW 43.20A.735 if the petition alleges a  
35 domestic violence behavior problem.

36 **Sec. 5.** RCW 10.05.040 and 2018 c 201 s 9005 are each amended to  
37 read as follows:

1 The program to which such person is referred, or the department  
2 of (~~social and health services~~) children, youth, and families if  
3 the petition is brought under RCW 10.05.020(2), shall conduct an  
4 investigation and examination to determine:

5 (1) Whether the person suffers from the problem described;

6 (2) Whether the problem is such that if not treated, or if no  
7 child welfare services are provided, there is a probability that  
8 similar misconduct will occur in the future;

9 (3) Whether extensive and long term treatment is required;

10 (4) Whether effective treatment or child welfare services for the  
11 person's problem are available; and

12 (5) Whether the person is (~~amenable~~): (a) Amenable to treatment  
13 as demonstrated by (i) completion of residential treatment; (ii)  
14 completion of a minimum of 18 hours of intensive outpatient  
15 treatment, for substance use disorder petitions; (iii) completion of  
16 a minimum of six mental health sessions, for mental health disorder  
17 petitions; or (iv) completion of a minimum of six domestic violence  
18 treatment sessions for domestic violence petitions; or (b) willing to  
19 cooperate with child welfare services. The requirement for completing  
20 a minimum number of sessions may be waived if the court finds good  
21 cause.

22 **Sec. 6.** RCW 10.05.050 and 2018 c 201 s 9006 are each amended to  
23 read as follows:

24 (1) The program, or the department of (~~social and health~~  
25 ~~services~~) children, youth, and families if the petition is brought  
26 under RCW 10.05.020(2), shall make a written report to the court  
27 stating its findings and recommendations after the examination  
28 required by RCW 10.05.040. If its findings and recommendations  
29 support treatment or the implementation of a child welfare service  
30 plan, it shall also recommend a treatment or service plan setting  
31 out:

32 (a) The type;

33 (b) Nature;

34 (c) Length;

35 (d) A treatment or service time schedule; and

36 (e) Approximate cost of the treatment or child welfare services.

37 (2) In the case of a child welfare service plan, the plan shall  
38 be designed in a manner so that a parent who successfully completes

1 the plan will not be likely to withhold the basic necessities of life  
2 from his or her child.

3 (3) The report with the treatment or service plan shall be filed  
4 with the court and a copy given to the petitioner and petitioner's  
5 counsel. A copy of the treatment or service plan shall be given to  
6 the prosecutor by petitioner's counsel at the request of the  
7 prosecutor. The evaluation facility, or the department of (~~social  
8 and health services~~) children, youth, and families if the petition  
9 is brought under RCW 10.05.020(2), making the written report shall  
10 append to the report a commitment by the treatment program or the  
11 department of (~~social and health services~~) children, youth, and  
12 families that it will provide the treatment or child welfare services  
13 in accordance with this chapter. The facility or the service provider  
14 shall agree to provide the court with a statement (~~every three  
15 months for the first year and every six months for the second year~~)  
16 monthly regarding (a) the petitioner's cooperation with the treatment  
17 or child welfare service plan proposed and (b) the petitioner's  
18 progress or failure in treatment or child welfare services. These  
19 statements shall be made as a declaration by the person who is  
20 personally responsible for providing the treatment or services.

21 **Sec. 7.** RCW 10.05.060 and 2009 c 135 s 1 are each amended to  
22 read as follows:

23 If the report recommends treatment, the court shall examine the  
24 treatment plan. If it approves the plan and the petitioner agrees to  
25 comply with its terms and conditions and agrees to pay the cost  
26 thereof, if able to do so, or arrange for the treatment, an entry  
27 shall be made upon the person's court docket showing that the person  
28 has been accepted for deferred prosecution. A copy of the treatment  
29 plan shall be filed with the court. If the charge be one that an  
30 abstract of the docket showing the charge, the date of the violation  
31 for which the charge was made, and the date of petitioner's  
32 acceptance is required to be sent to the department of licensing, an  
33 abstract shall be sent, and the department of licensing shall make an  
34 entry of the charge and of the petitioner's acceptance for deferred  
35 prosecution on the department's driving record of the petitioner. The  
36 entry is not a conviction for purposes of Title 46 RCW. Upon receipt  
37 of the abstract of the docket, the department shall issue the  
38 petitioner a probationary license in accordance with RCW 46.20.355,  
39 and the petitioner's driver's license shall be on probationary status

1 for five years from the date of the violation that gave rise to the  
2 charge. The department shall maintain the record (~~(for ten years from~~  
3 ~~date of entry of the order granting deferred prosecution)) consistent  
4 with the requirements of RCW 46.01.260.~~

5 **Sec. 8.** RCW 10.05.090 and 2010 c 269 s 10 are each amended to  
6 read as follows:

7 If a petitioner, who has been accepted for a deferred  
8 prosecution, fails or neglects to carry out and fulfill any term or  
9 condition of the petitioner's treatment plan or any term or condition  
10 imposed in connection with the installation of an interlock or other  
11 device under RCW 46.20.720, the facility, center, institution, or  
12 agency administering the treatment or the entity administering the  
13 use of the device, shall immediately report such breach to the court,  
14 the prosecutor, and the petitioner or petitioner's attorney of  
15 record, together with its recommendation. The court upon receiving  
16 such a report shall hold a hearing to determine whether the  
17 petitioner should be removed from the deferred prosecution  
18 (~~(program)~~). At the hearing, evidence shall be taken of the  
19 petitioner's alleged failure to comply with the treatment plan or  
20 device installation and the petitioner shall have the right to  
21 present evidence on his or her own behalf. The court shall either  
22 order that the petitioner continue on the treatment plan or be  
23 removed from deferred prosecution. If removed from deferred  
24 prosecution, the court shall enter judgment pursuant to RCW 10.05.020  
25 and, if the charge for which the deferred prosecution was granted was  
26 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify  
27 the department of licensing of the removal and entry of judgment.

28 **Sec. 9.** RCW 10.05.100 and 1998 c 208 s 2 are each amended to  
29 read as follows:

30 If a petitioner is subsequently convicted of a similar offense  
31 that was committed while the petitioner was in a deferred prosecution  
32 (~~(program)~~), upon notice the court shall remove the petitioner's  
33 docket from the deferred prosecution file and the court shall enter  
34 judgment pursuant to RCW 10.05.020.

35 **Sec. 10.** RCW 10.05.120 and 2019 c 263 s 705 are each amended to  
36 read as follows:



1 (1) Three years after receiving proof of successful completion of  
2 the (~~two-year~~) approved treatment (~~(program)~~) plan, and following  
3 proof to the court that the petitioner has complied with the  
4 conditions imposed by the court following successful completion of  
5 the (~~two-year~~) approved treatment (~~(program)~~) plan, but not before  
6 five years following entry of the order of deferred prosecution  
7 pursuant to a petition brought under RCW 10.05.020(1), the court  
8 shall dismiss the charges pending against the petitioner.

9 (2) When a deferred prosecution is ordered pursuant to a petition  
10 brought under RCW 10.05.020(2) and the court has received proof that  
11 the petitioner has successfully completed the child welfare service  
12 plan, or the plan has been terminated because the alleged victim has  
13 reached his or her majority and there are no other minor children in  
14 the home, the court shall dismiss the charges pending against the  
15 petitioner: PROVIDED, That in any case where the petitioner's  
16 parental rights have been terminated with regard to the alleged  
17 victim due to abuse or neglect that occurred during the pendency of  
18 the deferred prosecution, the termination shall be per se evidence  
19 that the petitioner did not successfully complete the child welfare  
20 service plan.

21 (~~((3) When a deferred prosecution is ordered for a petition  
22 brought under RCW 10.05.020(1) involving a domestic violence behavior  
23 problem and the court has received proof that the petitioner has  
24 successfully completed the domestic violence treatment plan, the  
25 court shall dismiss the charges pending against the petitioner.))~~)

26 **Sec. 11.** RCW 10.05.140 and 2019 c 263 s 706 are each amended to  
27 read as follows:

28 (1) As a condition of granting a deferred prosecution petition  
29 for a violation of RCW 46.61.502 or 46.61.504, the court shall order  
30 that the petitioner shall not operate a motor vehicle upon the public  
31 highways without a valid operator's license and proof of liability  
32 insurance. The amount of liability insurance shall be established by  
33 the court at not less than that established by RCW 46.29.490. As a  
34 condition of granting a deferred prosecution petition on any  
35 (~~(alcohol-dependency)~~) substance use disorder-based case, the court  
36 shall also order the installation of an ignition interlock under RCW  
37 46.20.720. The required periods of use of the interlock shall be not  
38 less than the periods provided for in RCW 46.20.720. As a condition  
39 of granting a deferred prosecution petition, the court may order the

1 petitioner to make restitution and to pay costs as defined in RCW  
2 10.01.160. To help ensure continued sobriety and reduce the  
3 likelihood of reoffense, the court may order reasonable conditions  
4 during the period of the deferred prosecution including, but not  
5 limited to, attendance at self-help recovery support groups for  
6 ~~((alcoholism or drugs))~~ substance use disorder, complete abstinence  
7 from alcohol and all nonprescribed mind-altering drugs, periodic  
8 urinalysis or breath analysis, and maintaining law-abiding behavior.  
9 The court may terminate the deferred prosecution ~~((program))~~ upon  
10 violation of the deferred prosecution order.

11 (2) As a condition of granting a deferred prosecution petition  
12 for a case involving a domestic violence behavior problem:

13 (a) The court shall order the petitioner not to possess firearms  
14 and order the petitioner to surrender firearms under RCW 9.41.800;  
15 and

16 (b) The court may order the petitioner to make restitution and to  
17 pay costs as defined in RCW 10.01.160. In addition, to help ensure  
18 continued sobriety and reduce the likelihood of reoffense in co-  
19 occurring domestic violence and substance ~~((abuse))~~ use disorder or  
20 mental health disorder cases, the court may order reasonable  
21 conditions during the period of the deferred prosecution including,  
22 but not limited to, attendance at self-help recovery support groups  
23 for ~~((alcoholism or drugs))~~ substance use disorder, complete  
24 abstinence from alcohol and all nonprescribed mind-altering drugs,  
25 periodic urinalysis or breath analysis, and maintaining law-abiding  
26 behavior. The court may terminate the deferred prosecution  
27 ~~((program))~~ upon violation of the deferred prosecution order.

28 **Sec. 12.** RCW 10.05.150 and 2016 sp.s. c 29 s 527 are each  
29 amended to read as follows:

30 (1) A deferred prosecution ~~((program))~~ for ~~((alcoholism))~~ either  
31 substance use disorder or mental health co-occurring disorder shall  
32 be for a two-year period and shall include, but not be limited to,  
33 the following requirements:

34 ~~((1))~~ (a) Total abstinence from alcohol and all other  
35 nonprescribed mind-altering drugs;

36 ~~((2) Participation in an intensive inpatient or intensive~~  
37 ~~outpatient program in a state-approved substance use disorder~~  
38 ~~treatment program;~~

1 ~~(3) Participation in a minimum of two meetings per week of an~~  
2 ~~alcoholism self-help recovery support group, as determined by the~~  
3 ~~assessing agency, for the duration of the treatment program;~~

4 ~~(4) Participation in an alcoholism self-help recovery support~~  
5 ~~group, as determined by the assessing agency, from the date of court~~  
6 ~~approval of the plan to entry into intensive treatment;~~

7 ~~(5) Not less than weekly approved outpatient counseling, group or~~  
8 ~~individual, for a minimum of six months following the intensive phase~~  
9 ~~of treatment;~~

10 ~~(6) Not less than monthly outpatient contact, group or~~  
11 ~~individual, for the remainder of the two-year deferred prosecution~~  
12 ~~period;~~

13 ~~(7) The decision to include the use of prescribed drugs,~~  
14 ~~including disulfiram, as a condition of treatment shall be reserved~~  
15 ~~to the treating facility and the petitioner's physician;~~

16 ~~(8)) (b) All treatment within the purview of this section shall~~  
17 ~~occur within or be approved by a state-approved ((substance use~~  
18 ~~disorder treatment program)) behavioral health agency as described in~~  
19 ~~chapter ((70.96A)) 71.24 RCW;~~

20 ~~((9)) (c) Signature of the petitioner agreeing to the terms and~~  
21 ~~conditions of the treatment program;~~

22 (d) Periodic, random urinalysis or breath analysis;

23 (e) If the petitioner fails to remain abstinent, a full substance  
24 use disorder reassessment and recommended treatment;

25 (f) No less than weekly approved outpatient counseling, whether  
26 group or individual, for a minimum of six months following the  
27 intensive phase of treatment;

28 (g) No less than monthly outpatient contact, whether group or  
29 individual, for the remainder of the two-year deferred prosecution  
30 period; and

31 (h) The decision to include the use of prescribed drugs,  
32 including disulfiram, as a condition of treatment shall be reserved  
33 to the treating facility and the petitioner's physician.

34 (2) A deferred prosecution for substance use disorder shall  
35 include the following requirements:

36 (a) Completion of an intensive outpatient treatment program or  
37 residential inpatient treatment program, depending on the severity of  
38 the diagnosis; and

39 (b) Participation in a minimum of two meetings per week of a  
40 substance use disorder self-help recovery support group, as

1 determined by the assessing agency, for the duration of the treatment  
2 program.

3 (3) A deferred prosecution for mental health co-occurring  
4 disorder shall include the following requirements:

5 (a) Completion of the requirements described in subsection (2) of  
6 this section, or completion of an outpatient program as determined by  
7 the petitioner's diagnostic evaluation; and

8 (b) Completion of individual or group mental health services.

9 **Sec. 13.** RCW 10.05.155 and 2019 c 263 s 708 are each amended to  
10 read as follows:

11 A deferred prosecution ((program)) for domestic violence  
12 behavior, or domestic violence co-occurring with substance abuse or  
13 mental health, must include, but is not limited to, the following  
14 requirements:

15 (1) Completion of a risk assessment;

16 (2) Participation in the level of treatment recommended by the  
17 program as outlined in the current treatment plan;

18 (3) Compliance with the contract for treatment;

19 (4) Participation in any ancillary or co-occurring treatments  
20 that are determined to be necessary for the successful completion of  
21 the domestic violence intervention treatment including, but not  
22 limited to, mental health or substance use treatment;

23 (5) Domestic violence intervention treatment within the purview  
24 of this section to be completed with a state-certified domestic  
25 violence intervention treatment program;

26 (6) Signature of the petitioner agreeing to the terms and  
27 conditions of the treatment program;

28 (7) Proof of compliance with any active order to surrender  
29 weapons issued in this program or related civil protection orders or  
30 no-contact orders.

31 NEW SECTION. **Sec. 14.** A new section is added to chapter 10.05  
32 RCW to read as follows:

33 A deferred prosecution for mental health disorder where the  
34 wrongful conduct did not involve, and was not caused by, alcohol,  
35 drugs, or a substance use disorder, shall include treatment  
36 recommended by a state-approved mental health provider.

1       **Sec. 15.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to  
2 read as follows:

3       As a condition of granting deferred prosecution, the court may  
4 order supervision of the petitioner during the period of deferral and  
5 may levy a monthly assessment upon the petitioner as provided in RCW  
6 10.64.120. In a jurisdiction with a probation department, the court  
7 may appoint the probation department to supervise the petitioner. In  
8 a jurisdiction without a probation department, the court may appoint  
9 an appropriate person or agency to supervise the petitioner. A  
10 supervisor appointed under this section shall be required to do at  
11 least the following:

12       (1) If the charge for which deferral is granted relates to  
13 operation of a motor vehicle, at least once every ~~((six))~~ three  
14 months request ~~((from the department of licensing))~~ an abstract of  
15 the petitioner's driving record; ~~((and))~~

16       (2) At least once every month make contact with the petitioner  
17 ~~((or with any agency to which the petitioner has been directed for~~  
18 ~~treatment as a part of the deferral))~~ until treatment is completed;

19       (3) Review the petitioner's criminal history at a minimum of  
20 every 90 days until the end of the deferral period; and

21       (4) Report known violations of supervision or law and  
22 noncompliance with conditions of the deferred prosecution to the  
23 court within five business days or as soon as practicable.

24       **Sec. 16.** RCW 9.94A.525 and 2021 c 215 s 100 are each amended to  
25 read as follows:

26       The offender score is measured on the horizontal axis of the  
27 sentencing grid. The offender score rules are as follows:

28       The offender score is the sum of points accrued under this  
29 section rounded down to the nearest whole number.

30       (1) A prior conviction is a conviction which exists before the  
31 date of sentencing for the offense for which the offender score is  
32 being computed. Convictions entered or sentenced on the same date as  
33 the conviction for which the offender score is being computed shall  
34 be deemed "other current offenses" within the meaning of RCW  
35 9.94A.589.

36       (2) (a) Class A and sex prior felony convictions shall always be  
37 included in the offender score.

38       (b) Class B prior felony convictions other than sex offenses  
39 shall not be included in the offender score, if since the last date

1 of release from confinement (including full-time residential  
2 treatment) pursuant to a felony conviction, if any, or entry of  
3 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive  
4 years in the community without committing any crime that subsequently  
5 results in a conviction.

6 (c) Except as provided in (e) of this subsection, class C prior  
7 felony convictions other than sex offenses shall not be included in  
8 the offender score if, since the last date of release from  
9 confinement (including full-time residential treatment) pursuant to a  
10 felony conviction, if any, or entry of judgment and sentence, the  
11 offender had spent five consecutive years in the community without  
12 committing any crime that subsequently results in a conviction.

13 (d) Except as provided in (e) of this subsection, serious traffic  
14 convictions shall not be included in the offender score if, since the  
15 last date of release from confinement (including full-time  
16 residential treatment) pursuant to a conviction, if any, or entry of  
17 judgment and sentence, the offender spent five years in the community  
18 without committing any crime that subsequently results in a  
19 conviction.

20 (e) If the present conviction is felony driving while under the  
21 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
22 felony physical control of a vehicle while under the influence of  
23 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate  
24 crimes for the offense as defined by RCW 46.61.5055(14) shall be  
25 included in the offender score, and prior convictions for felony  
26 driving while under the influence of intoxicating liquor or any drug  
27 (RCW 46.61.502(6)) or felony physical control of a vehicle while  
28 under the influence of intoxicating liquor or any drug (RCW  
29 46.61.504(6)) shall always be included in the offender score. All  
30 other convictions of the defendant shall be scored according to this  
31 section.

32 (f) Prior convictions for a repetitive domestic violence offense,  
33 as defined in RCW 9.94A.030, shall not be included in the offender  
34 score if, since the last date of release from confinement or entry of  
35 judgment and sentence, the offender had spent (~~ten~~) 10 consecutive  
36 years in the community without committing any crime that subsequently  
37 results in a conviction.

38 (g) This subsection applies to both adult and juvenile prior  
39 convictions.

1 (3) Out-of-state convictions for offenses shall be classified  
2 according to the comparable offense definitions and sentences  
3 provided by Washington law. Federal convictions for offenses shall be  
4 classified according to the comparable offense definitions and  
5 sentences provided by Washington law. If there is no clearly  
6 comparable offense under Washington law or the offense is one that is  
7 usually considered subject to exclusive federal jurisdiction, the  
8 offense shall be scored as a class C felony equivalent if it was a  
9 felony under the relevant federal statute.

10 (4) Score prior convictions for felony anticipatory offenses  
11 (attempts, criminal solicitations, and criminal conspiracies) the  
12 same as if they were convictions for completed offenses.

13 (5) (a) In the case of multiple prior convictions, for the purpose  
14 of computing the offender score, count all convictions separately,  
15 except:

16 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),  
17 to encompass the same criminal conduct, shall be counted as one  
18 offense, the offense that yields the highest offender score. The  
19 current sentencing court shall determine with respect to other prior  
20 adult offenses for which sentences were served concurrently or prior  
21 juvenile offenses for which sentences were served consecutively,  
22 whether those offenses shall be counted as one offense or as separate  
23 offenses using the "same criminal conduct" analysis found in RCW  
24 9.94A.589(1) (a), and if the court finds that they shall be counted as  
25 one offense, then the offense that yields the highest offender score  
26 shall be used. The current sentencing court may presume that such  
27 other prior offenses were not the same criminal conduct from  
28 sentences imposed on separate dates, or in separate counties or  
29 jurisdictions, or in separate complaints, indictments, or  
30 informations;

31 (ii) In the case of multiple prior convictions for offenses  
32 committed before July 1, 1986, for the purpose of computing the  
33 offender score, count all adult convictions served concurrently as  
34 one offense, and count all juvenile convictions entered on the same  
35 date as one offense. Use the conviction for the offense that yields  
36 the highest offender score.

37 (b) As used in this subsection (5), "served concurrently" means  
38 that: (i) The latter sentence was imposed with specific reference to  
39 the former; (ii) the concurrent relationship of the sentences was  
40 judicially imposed; and (iii) the concurrent timing of the sentences

1 was not the result of a probation or parole revocation on the former  
2 offense.

3 (6) If the present conviction is one of the anticipatory offenses  
4 of criminal attempt, solicitation, or conspiracy, count each prior  
5 conviction as if the present conviction were for a completed offense.  
6 When these convictions are used as criminal history, score them the  
7 same as a completed crime.

8 (7) If the present conviction is for a nonviolent offense and not  
9 covered by subsection (11), (12), or (13) of this section, count one  
10 point for each adult prior felony conviction and one point for each  
11 juvenile prior violent felony conviction and 1/2 point for each  
12 juvenile prior nonviolent felony conviction.

13 (8) If the present conviction is for a violent offense and not  
14 covered in subsection (9), (10), (11), (12), or (13) of this section,  
15 count two points for each prior adult and juvenile violent felony  
16 conviction, one point for each prior adult nonviolent felony  
17 conviction, and 1/2 point for each prior juvenile nonviolent felony  
18 conviction.

19 (9) If the present conviction is for a serious violent offense,  
20 count three points for prior adult and juvenile convictions for  
21 crimes in this category, two points for each prior adult and juvenile  
22 violent conviction (not already counted), one point for each prior  
23 adult nonviolent felony conviction, and 1/2 point for each prior  
24 juvenile nonviolent felony conviction.

25 (10) If the present conviction is for Burglary 1, count prior  
26 convictions as in subsection (8) of this section; however, count two  
27 points for each prior adult Burglary 2 or residential burglary  
28 conviction, and one point for each prior juvenile Burglary 2 or  
29 residential burglary conviction.

30 (11) If the present conviction is for a felony traffic offense  
31 count two points for each adult or juvenile prior conviction for  
32 Vehicular Homicide or Vehicular Assault; for each felony offense  
33 count one point for each adult and 1/2 point for each juvenile prior  
34 conviction; for each serious traffic offense, other than those used  
35 for an enhancement pursuant to RCW 46.61.520(2), count one point for  
36 each adult and 1/2 point for each juvenile prior conviction; count  
37 one point for each adult and 1/2 point for each juvenile prior  
38 conviction for operation of a vessel while under the influence of  
39 intoxicating liquor or any drug; count one point for a deferred  
40 prosecution granted under chapter 10.05 RCW for a second or



1 subsequent violation of RCW 46.61.502 or 46.61.504, or an equivalent  
2 local ordinance.

3 (12) If the present conviction is for homicide by watercraft or  
4 assault by watercraft count two points for each adult or juvenile  
5 prior conviction for homicide by watercraft or assault by watercraft;  
6 for each felony offense count one point for each adult and 1/2 point  
7 for each juvenile prior conviction; count one point for each adult  
8 and 1/2 point for each juvenile prior conviction for driving under  
9 the influence of intoxicating liquor or any drug, actual physical  
10 control of a motor vehicle while under the influence of intoxicating  
11 liquor or any drug, or operation of a vessel while under the  
12 influence of intoxicating liquor or any drug.

13 (13) If the present conviction is for manufacture of  
14 methamphetamine count three points for each adult prior manufacture  
15 of methamphetamine conviction and two points for each juvenile  
16 manufacture of methamphetamine offense. If the present conviction is  
17 for a drug offense and the offender has a criminal history that  
18 includes a sex offense or serious violent offense, count three points  
19 for each adult prior felony drug offense conviction and two points  
20 for each juvenile drug offense. All other adult and juvenile felonies  
21 are scored as in subsection (8) of this section if the current drug  
22 offense is violent, or as in subsection (7) of this section if the  
23 current drug offense is nonviolent.

24 (14) If the present conviction is for Escape from Community  
25 Custody, RCW 72.09.310, count only prior escape convictions in the  
26 offender score. Count adult prior escape convictions as one point and  
27 juvenile prior escape convictions as 1/2 point.

28 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or  
29 Escape 2, RCW 9A.76.120, count adult prior convictions as one point  
30 and juvenile prior convictions as 1/2 point.

31 (16) If the present conviction is for Burglary 2 or residential  
32 burglary, count priors as in subsection (7) of this section; however,  
33 count two points for each adult and juvenile prior Burglary 1  
34 conviction, two points for each adult prior Burglary 2 or residential  
35 burglary conviction, and one point for each juvenile prior Burglary 2  
36 or residential burglary conviction.

37 (17) If the present conviction is for a sex offense, count priors  
38 as in subsections (7) through (11) and (13) through (16) of this  
39 section; however, count three points for each adult and juvenile  
40 prior sex offense conviction.

1 (18) If the present conviction is for failure to register as a  
2 sex offender under RCW 9A.44.130 or 9A.44.132, count priors as in  
3 subsections (7) through (11) and (13) through (16) of this section;  
4 however, count three points for each adult and juvenile prior sex  
5 offense conviction, excluding prior convictions for failure to  
6 register as a sex offender under RCW 9A.44.130 or 9A.44.132, which  
7 shall count as one point.

8 (19) If the present conviction is for an offense committed while  
9 the offender was under community custody, add one point. For purposes  
10 of this subsection, community custody includes community placement or  
11 postrelease supervision, as defined in chapter 9.94B RCW.

12 (20) If the present conviction is for Theft of a Motor Vehicle,  
13 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without  
14 Permission 1, or Taking a Motor Vehicle Without Permission 2, count  
15 priors as in subsections (7) through (18) of this section; however,  
16 count one point for prior convictions of Vehicle Prowling 2, and  
17 three points for each adult and juvenile prior Theft 1 (of a motor  
18 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property  
19 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor  
20 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,  
21 Taking a Motor Vehicle Without Permission 1, or Taking a Motor  
22 Vehicle Without Permission 2 conviction.

23 (21) If the present conviction is for a felony domestic violence  
24 offense where domestic violence as defined in RCW 9.94A.030 was  
25 pleaded and proven, count priors as in subsections (7) through (20)  
26 of this section; however, count points as follows:

27 (a) Count two points for each adult prior conviction where  
28 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
29 after August 1, 2011, for any of the following offenses: A felony  
30 violation of a no-contact or protection order (RCW 7.105.450 or  
31 former RCW 26.50.110), felony Harassment (RCW 9A.46.020(2)(b)),  
32 felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020),  
33 Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful  
34 imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2  
35 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW  
36 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or  
37 Arson 2 (RCW 9A.48.030);

38 (b) Count two points for each adult prior conviction where  
39 domestic violence as defined in RCW 9.94A.030 was pleaded and proven  
40 after July 23, 2017, for any of the following offenses: Assault of a

1 child in the first degree, RCW 9A.36.120; Assault of a child in the  
2 second degree, RCW 9A.36.130; Assault of a child in the third degree,  
3 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW  
4 9A.42.020; or Criminal Mistreatment in the second degree, RCW  
5 9A.42.030;

6 (c) Count one point for each second and subsequent juvenile  
7 conviction where domestic violence as defined in RCW 9.94A.030 was  
8 pleaded and proven after August 1, 2011, for the offenses listed in  
9 (a) of this subsection; and

10 (d) Count one point for each adult prior conviction for a  
11 repetitive domestic violence offense as defined in RCW 9.94A.030,  
12 where domestic violence as defined in RCW 9.94A.030, was pleaded and  
13 proven after August 1, 2011.

14 (22) The fact that a prior conviction was not included in an  
15 offender's offender score or criminal history at a previous  
16 sentencing shall have no bearing on whether it is included in the  
17 criminal history or offender score for the current offense. Prior  
18 convictions that were not counted in the offender score or included  
19 in criminal history under repealed or previous versions of the  
20 sentencing reform act shall be included in criminal history and shall  
21 count in the offender score if the current version of the sentencing  
22 reform act requires including or counting those convictions. Prior  
23 convictions that were not included in criminal history or in the  
24 offender score shall be included upon any resentencing to ensure  
25 imposition of an accurate sentence.

26 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2024.

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